quacy of the remedy at law, and the latter upon the ground that equity will not specifically enforce contracts for personal services. *Lumley* v. *Wagner* and *Donnell* v. *Bennett*, *supra*, however, seem inconsistent with the principles above stated. The cases, to be sure, have been distinguished upon the ground of the existence of an express covenant not to do the act enjoined. In both cases, however, that covenant was one that upon the construction of the contract would have been implied had it not been expressed, an illustration, therefore, of that accidental employment of negative rather than affirmative forms of expression to which, according to Lord Selborne, weight should not be given. Moreover, in neither of these cases did the question of the adequacy of the legal remedy play the important part assigned to it in the opinion endorsed by the principal case.

While the doctrine of *Lumley* v. *Wagner* cannot as yet, be said to be established in this country, it has been followed or favorably commented upon by a number of important courts. The American decisions, however, differ from the English in two respects. They have refused to limit the doctrine to cases showing an express covenant not to do the act enjoined, where upon construction of the contract an implied agreement to the same effect would be raised. *Duff* v. *Russell*, 60 N. Y. Super. Ct. Rep. 80; affirmed 133 N. Y. 678. They have refused to apply the doctrine to cases where the services contracted for could be rendered by a substitute, that is, to cases where there was an adequate remedy at law. *Carter* v. *Ferguson*, 58 Hun (N. Y.) 569. While the case of *Lumley* v. *Wagner* has been subjected to some criticism it must be admitted that if the doctrine be accepted the American treatment accords better with general principles of equity than its treatment at the hands of the courts from which it emanated.

CONTRACTS REQUIRING THE ARCHITECT'S APPROVAL AS A PREREQUISITE TO PAYMENT. — American courts have in general shown greater leniency than the English in regard to the performance of express conditions precedent. In no class of cases is this fact better brought out than in suits on building contracts in which payment is to be made only when the architect's certificate is obtained. In England the builder must produce the certificate; he can only excuse himself by proving collusion between the architect and the defendant. *Batterbury* v. *Vyse*, 2 H. & C. 42; *Clarke* v. *Watson*, 18 C. B. N. S. 278. In most of our states fraud or gross mistake in withholding the order will entitle the plaintiff to sue on the contract without it. *St. Paul, etc., Ry.* v. *Bradbury*, 42 Minn. 222. *Classen* v. *Davidson*, 59 Ill. App. 106. But in New York, if the plaintiff can persuade the jury that he has substantially performed the contract he can recover in spite of the architect's disapproval. *Nolan* v. *Whitney*, 88 N. Y. 648. A recent decision in a circuit court of Ohio adopts the New York view. The plaintiff sued on a building contract containing the usual condition of payment upon presentation of the architect's certificate. He did not produce the certificate, and could not prove fraud. The jury found specially that the architect's reason for refusing the certificate was dissatisfaction with the work. The court, on appeal, sustained a general verdict in favor of the plaintiff on the ground that it was not found that the architect's refusal was reasonable. *Wicker* v. *Messinger*, 12 Oh. Circ. Dec. 425.

To realize how inconsistent a decision of this nature is with the strict common law doctrines it must be borne in mind that the condition was expressly precedent, that it was not fulfilled, and that no definite excuse for its breach was found by the jury. In theory the plaintiff to recover must show that the defendant prevented the carrying out of the contract. The American courts in general, moved by the extreme rigor of express conditions, have modified the law to permit recovery in cases of fraud or gross mistake. But it is conceived that the true rule is that an honest refusal of the architect to give the certificate, no matter how mistaken he may be, debars the builder from suing on the contract. *Bradner* v. *Roffsel*, 57 N. J. Law 412. This rule, while mitigating the harshness of the English doctrine, is yet within the fair meaning of the contract. To make it more lenient is virtually to substitute a jury for the architect. To make it more strict is to acknowledge that the latter need not give an honest judgment. Each of these results is equally undesirable, and the decision of the principal case, tending as it does to enlarge the scope of the New York doctrine, is to be regretted.

INJUNCTIONS AGAINST PICKETING. — The ill feeling and prejudice engendered by strikes make the subject one requiring peculiar delicacy of treatment and one, moreover, of great popular interest. The system commonly known as "picketing" almost always accompanies a strike. Its purpose generally is not only to gain information but to prevent others from entering the employ of the company or person against whom the strike is directed. Whether it is tortious always, or only when it assumes particular aspects, has been the subject of considerable difference of opinion. It is apparently conceded that the use of threats or violence will be enjoined. *Murdock, Kerr & Co.* v. *Walker*, 152 Pa. St. 595. Some authorities refuse to go beyond this. *Krebs* v. *Rosenstein*, 66 N. Y. Supp. 42. Others extend the injunction to picketing in general. *Vegelahn* v. *Guntner*, 167 Mass. 92. In a recent case in Ohio an injunction was granted against all picketing. *Dayton, etc., Co.* v. *Metal Polishers, etc., Union*, 11 Dec. (Ohio) 643.

Perhaps the most satisfactory way to treat a subject of this sort is to adopt the view of Mr. Chief Justice Holmes that the intentional infliction of damage is *prima facie* actionable. 8 HARV. L. REV. 1. This would of course include intentional interference with another's business. Obviously, such interference is actionable if it is accomplished by a direct tort against his person or property. The general rule is that it is also actionable if accomplished by inducing a third person to break a contract with him. *Lumley* v. *Gye*, 2 E. & B. 216; *Jones* v. *Stanly*, 76 N. C. 355. Although no actual tortious methods are used, interference is still actionable *prima facie*. In other words, it is actionable unless there is some justification. The ordinary pursuit of business or competition in trade furnishes a justification, much as the right of a man to use his real estate as he pleases furnishes a justification for the intentional infliction of damage by such means as "spite fences." *Letts* v. *Kessler*, 54 Oh. St. 73. See *Mogul S. S. Co.* v. *McGregor, Gow & Co.*, 23 Q. B. D. 598; L. R. [1892] A. C. 25. It would seem that ordinarily the competition between employer and employee, and among employees themselves, which is just as real as that between business interests, should furnish a justification.